

§ 1491.4

7 CFR Ch. XIV (1–1–11 Edition)

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Island Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

§ 1491.4 Program requirements.

(a) Under FRPP, the Chief, on behalf of CCC, shall provide funding for the purchase of conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting the agricultural use and related conservation values of the land by limiting nonagricultural uses of the land. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the fair market value of the easement. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A Federal right of enforcement must also be included in each FRPP funded easement deed for the protection of the Federal investment.

(b) The term of all easements or other interests in land shall be in per-

petuity unless prohibited by State law. In States that limit the term of the easement or other interest in land, the term of the easement or other interest in land must be the maximum allowed by State law.

(c) To be eligible to receive FRPP funding, an entity must meet the definition of “eligible entity” as listed in § 1491.3. In addition, eligible entities interested in receiving FRPP funds must demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) To be eligible as a “certified entity,” an entity must be qualified to be an “eligible entity” and have demonstrated, as determined by the Chief:

(1) The ability to complete acquisition of easements in a timely fashion;

(2) The ability to monitor easements on a regular basis;

(3) The ability to enforce the provisions of easement deeds;

(4) Experience enrolling parcels in the Farm and Ranch Lands Protection Program (FRPP) or the Farmland Protection Program (FPP);

(5) For non-governmental organizations, the existence of a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized in accordance with NRCS standards. The dedicated fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(6) Other certification criteria, including having a plan for administering easements enrolled under this part, as determined by the Chief.

(e) Review and Revocation of Certification.

(1) The Chief shall conduct a review of certified entities every three years to ensure that the certified entities are meeting the certification criteria established in § 1491.4(d).

(2) If the Chief finds that the certified entity no longer meets the criteria in § 1491.4(d), the Chief may:

Commodity Credit Corporation, USDA

§ 1491.5

(i) Allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to meet the criteria; and

(ii) Revoke the certification of the entity, if after the specified period of time, the certified entity does not meet the criteria established in § 1491.4(d).

(f) Eligible land:

(1) Must be privately owned land on a farm or ranch and contain at least 50 percent prime, unique, Statewide, or locally important farmland, unless otherwise determined by the State Conservationist; contain historical or archaeological resources; or furthers a State or local policy consistent with the purposes of the program; and is subject to a pending offer by an eligible entity;

(2) Must be cropland, rangeland, grassland, pasture land, or forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development;

(3) May include land that is incidental to the cropland, rangeland, grassland, pasture land, or forest land if the incidental land is determined by the Secretary to be necessary for the efficient administration of a conservation easement;

(4) May include parts of or entire farms or ranches;

(5) Must not include forest land of greater than two-thirds of the easement area. Forest land that exceeds the greater of 10 acres or 10 percent of the easement area shall have a forest management plan before closing;

(6) Unless otherwise determined by the Chief, NRCS shall not provide FRPP funds for the purchase of an easement or other interest in land on land owned in fee title by an agency of the United States, a State or local government, or by an entity whose purpose is to protect agricultural use and related conservation values, including those listed in the statute under eligible land, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use;

(7) Must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligi-

bility requirements set forth in part 1400 of this title;

(8) Must possess suitable on-site and off-site conditions which will allow the easement to be effective in achieving the purposes of the program. Suitability conditions may include, but are not limited to, hazardous substances on or in the vicinity of the parcel, land use surrounding the parcel that is not compatible with agriculture, and highway or utility corridors that are planned to pass through or immediately adjacent to the parcel; and

(9) May be land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon achieving the program purposes. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

(g) Prior to FRPP fund disbursement, the value of the conservation easement must be appraised. Appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions, as selected by the entity. State Conservationists will provide the guidelines through which NRCS will review appraisals for quality control purposes.

(h) The landowner shall be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

§ 1491.5 Application procedures.

(a) An entity shall submit an application to the State Conservationist in the State where parcels are located in order to determine if the entity is eligible to participate in FRPP.